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RECENT DEVELOPMENTS

Prescriptions Issued to Deceased and Fictitious Patients Are Forgeries Under New York Penal Law Although Signed With True Name of Issuing Doctor—*People v. Klein**

Defendant, a licensed New York physician, issued five prescriptions for narcotics, signing his own name and giving his correct address and narcotics registry number. On four of the prescriptions deceased patients were represented as the intended recipients of the drugs; on the fifth the name of a fictitious patient was used. The defendant used these forms to obtain the prescribed narcotics and administered them to an addict. He was convicted of ten counts of third-degree forgery under sections 889-b and 881 of the New York Penal Law.[1] On appeal, *held*, affirmed. Prescriptions issued to deceased and fictitious patients are forgeries under New York law, notwithstanding the fact that they are signed with the true name of the doctor who executes them.

The New York Penal Law, like that of many other states, makes "forgery" a criminal offense but sets forth no definition for this general term.[2] It is apparently assumed that since forgery was a crime at common law, the boundaries of the offense have been sufficiently delineated in its historical development.[3] This assumption is unwar-

* People v. Klein, 23 App. Div. 2d 95, 258 N.Y.S.2d 783, *rev'd*, 154 N.Y.L.J. p. 16, col. 2, (Ct. App, Dec. 3, 1965) (hereinafter cited as principal case).

1. For each of the five unlawful prescriptions, the defendant was convicted of one count of third-degree forgery for having violated N.Y. PEN. LAW § 889-b, which provides that "a person who shall falsely make, alter, forge or counterfeit a doctor's prescription, or utter the same, shall be guilty of forgery in the third degree," and of a second count for violating N.Y. PEN. LAW § 881, which provides that "a person who . . . utters, offers, disposes of or puts off as true . . . a forged . . . instrument or writing, or other thing, the false making, forging or altering of which is punishable as forgery, is guilty of forgery in the same degree as if he had forged the same."

2. "The expressions 'forge,' 'forged,' and 'forging' as used in this article, include false making, counterfeiting, and the alteration . . . of a genuine instrument in whole or in part . . . ." N.Y. PEN. LAW § 880. False making and counterfeiting are merely synonyms for the term "forgery" and do not define that term. See Greathouse v. United States, 170 F.2d 512, 514 (4th Cir. 1948): "The words 'falsely made, forged, altered or counterfeited' . . . are ejusdem generis and are usually employed to denounce the crime of forgery. Indeed it may be said that when used in an association of this kind the words 'falsely made' and 'forged' are substantially synonymous . . . ." See also Marteney v. United States, 216 F.2d 760, 763 (10th Cir. 1954). One of the primary sources of confusion in the law of forgery is the use of the term "false making" in the definition of forgery. False making in the forgery context has a far more restricted meaning than would be expected from the common usage of this term. Semantic problems result when it is necessary to distinguish between the false making of an instrument and the making of false statements in an instrument, but the distinction is an important one.

3. See People v. Berman, 197 N.Y.S.2d 346 (Sup. Ct. 1960), where it was said that the New York definition of forgery is intended to embrace all that was included in the common-law definition.

ranted, however, because there are two conflicting definitions of forgery, both having early common-law origins and supported by subsequent authority. A majority of those states which have no statutory definition accept the so-called "narrow view,"[4] which defines forgery as "the false making of a writing so as to make the writing appear to be that of another."[5] Under this definition, any instrument issued by its actual maker as his own is considered a genuine document even if it contains false statements or purports to have some legal effect which it does not in fact have.[6] A minority of states, however, incorporate fraud into the forgery context and subscribe to the "broad view" of forgery: "the making of any instrument with the intent to defraud."[7] This view encompasses not only the cases of false purported authorship recognized by the narrow view, but also writings which contain false statements if such documents are used to defraud.[8] In order properly to apply the New York forgery statutes, which leave the courts to the common law for the definition of the crime, a court must determine which of the above views prevails in New York. The court in the principal case, however, failed to take account of the vital distinction between the two positions.

The case law of New York seems to evidence an acceptance of the narrow view of forgery. Several decisions expressly hold that in order to be "falsely made" a writing must purport to be that of one other than its maker.[9] Most of the other forgery decisions, while not so explicit, reach results consistent with these holdings.[10] In the sev-

4. See Annot., 41 A.L.R. 229 (1926), for a list of the states adhering to this view.

5. *In re* Windsor, 6 B. & S. 521, 527, 122 Eng. Rep. 1288, 1290 (K.B. 1865): "We must take forgery . . . to mean that which by universal acceptation it is understood to mean, namely the making or altering of a writing so as to make the writing or alteration purport to be the act of some person, which it is not." See also *In re* Phipps, 8 Ont. App. 77 (1883).

6. It should be noted that courts accepting this reasoning have held that a person may be guilty of forgery in signing his own name, in his own handwriting, if he represents himself to be another person who bears the same name. See, *e.g.*, Peoples Trust Co. v. Smith, 215 N.Y. 488, 109 N.E. 561 (1915); Third Nat'l Bank v. Merchant's Nat'l Bank, 76 Hun 475, 27 N.Y.S. 1070 (Sup. Ct. 1874).

7. This view was expressed in the leading case of Queen v. Ritson, L.R. 1 Cr. Cas. 200 (Eng. 1869). The *Ritson* case relied primarily upon the Report of the English Commission on Criminal Law which said: "An offender may be guilty of a false making of an instrument although he sign and execute it in his own name, if it be false in any material part and be calculated to induce another to give credit to it as genuine when it is false and deceptive." ENG. CRIM. LAW COMM'N, FIFTH REPORT 66 (1840).

8. Several states have expressly accepted this view. In Ohio v. Havens, 91 Ohio App. 578, 109 N.E.2d 48 (1951), the court rejected as meaningless the distinction between false making and false written statements, and subsequently in the case of *In re* Clemmons, 168 Ohio St. 83, 151 N.E.2d 553 (1958), a man was convicted of forgery for issuing a check in his own name, on a bank in which he had no account. See also Illinois v. Mau, 377 Ill. 199, 36 N.E.2d 235 (1941). The latter two decisions were respectively criticized in 72 HARV. L. REV. 565 (1958) and 26 MARQ. L. REV. 165 (1942).

9. *E.g.*, International Union Bank v. National Sur. Co., 245 N.Y. 368, 157 N.E. 269 (1927); People v. Mann, 75 N.Y. 484, 31 Am. Rep. 482 (1878).

10. See, *e.g.*, People v. Berman, 197 N.Y.S.2d 346 (Sup. Ct. 1960). See also Fitz-

eral New York cases whose *outcome* cannot be reconciled with the narrow view of forgery, the courts nevertheless adhered to this view in *theory*,[11] using fictions to encompass within the restricted view offenses which, in the absence of such artificiality, could constitute forgery only if the broader view were applied.[12] That the courts felt it necessary to resort to this indirect approach would seem to be evidence that the narrow view of forgery was the accepted law in the jurisdiction.

Furthermore, the New York Penal Law tacitly recognizes the narrow view of forgery. This is evidenced by several sections of the forgery article which expressly prohibit the making of certain writings which purport to be those of another.[13] The theory of forgery inherent in this article is obscured, however, because the article also includes certain offenses involving only false written statements.[14] Although the effect of the incorporation of the latter offenses is to give the forgery article the expanded scope of the broad view, it was not intended that the theory of the broad view be adopted.[15] False written statements are included in the forgery article of the Penal Law only because they are to be punished *as if* they were forgery, not because they are considered *to be* forgery, as they would be under the broad view.[16] The theory of the forgery article is immaterial

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gibbon's Boiler Co. v. Employer's Life Assur. Corp., 105 F.2d 893, 895 (2d Cir. 1939), where the holding in International Union Bank v. National Sur. Co., *supra* note 9, was cited as the New York law of forgery and as having been followed in the majority of New York decisions.

11. See, *e.g.*, Schramm v. Metropolitan Cas. Ins. Co., 224 App. Div. 573, 231 N.Y.S. 554 (1928); People v. Filkin, 83 App. Div. 589, 82 N.Y.S. 15 (1903).

12. In People v. Filkin, *supra* note 11, it was held that a former town clerk who executed official bounty certificates in his own name, but predated them to make it appear that they had been issued before the expiration of his term of office, actually held out the certificates as those of another person—a town clerk having the same name, but actually in office at the time of execution.

13. *E.g.*, N.Y. PEN. LAW § 884: "A person is guilty of forgery in the first degree who . . . forges . . . a will or codicil . . . or a deed or other instrument, being or purporting to be the act of another. . . ."

14. *E.g.*, N.Y. PEN. LAW § 889: "A person who . . . makes a false entry in any . . . account or book of accounts . . . is guilty of forgery in the third degree."

15. See NEW YORK TEMPORARY COMMISSION ON REVISION OF THE PENAL LAW AND CRIMINAL CODE, THIRD INTERIM REPORT 24 (Legis. Doc. 14, 1964): "[The Penal Law's] Forgery article (Art. 84), engaging in exhaustive and needless specificity and enumeration, strings together in patternless style a series of miscellaneous offenses—*some not even of the forgery genus.*" (Emphasis added.) The offenses referred to as not being of the forgery genus are those of making false written statements. *E.g.*, N.Y. PEN. LAW § 889(2), quoted *supra* note 14.

16. It was recognized at an early date that, although New York punished certain offenses as if they were "forgery," these offenses were not thought to constitute "true" forgery. In the case of *In re* Windsor, 6 B. & S. 521, 122 Eng. Rep. 1288 (1865), New York sought the extradition of one who had allegedly committed the crime of "forgery" when he had violated a local statute making it forgery in the third degree to make false entries in the books of a corporation. England refused to deliver the accused, because the alleged offense was not within the meaning of "forgery" as used in the treaty provision concerning extradition. "Telling a lie does not become forgery

in situations where the penalties for forgery and the making of false written statements are the same,[17] since in either case the defendant is punished *as if* he had committed forgery.

The theory behind these offenses is of prime importance in the case at hand, however, because the forgery of a doctor's prescription is a felony under the Penal Law,[18] whereas the making of false statements therein is only a misdemeanor under the Public Health Law.[19] It is thus imperative in this setting that the traditional, but often ignored, distinction between these offenses be recognized. Under the Revised New York Penal Law,[20] which will take effect in 1967, the distinction between "forgery" and the "making of false written statements" is emphasized by treating these offenses individually in separate sections of the code.[21] Section 170 of the revision defines a forged instrument as one "which purports to be an authentic creation of its ostensible maker but which is not, either because the ostensible maker is fictitious or because, if real, he did not authorize the making." The comments on this section state that it is not intended to change the existing law, but merely to eliminate some ambiguities in the forgery article of the preceding Penal Code.[22] Thus, since the definition in the new code coincides with the narrow view of forgery,[23] the Revised Penal Law substantiates

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because it is reduced to writing . . . . It is true that the statute of New York says that such conduct shall be deemed to be forgery in the third degree . . . . The meaning of the New York statute is the party *shall be punished as if for forgery.*" *Id.* at 530, 122 Eng. Rep. at 1292. (Emphasis added.) See People v. Gould, 41 Misc. 2d 875, 246 N.Y.S.2d 758 (Westchester County Ct. 1964), where the defendant was acquitted of uttering a forged instrument because the instrument he executed and passed as his own contained only false statements of fact and was therefore not a forgery. The defendant was convicted of third degree forgery, however, because the making of false written statements was expressly prohibited by a section of the forgery article of the Penal Law. The ambiguous result of this case is that the defendant was convicted of "forgery" after it was held that the instrument he executed was not forged.

17. An example of identical punishments being prescribed for forgery and the making of false written statements is found in the following sections of the forgery article. N.Y. PEN. LAW § 882: "The false making or forging of an instrument or writing, purporting to have been issued by or on behalf of a corporation . . . and bearing the pretended signature of any person therein falsely indicated . . . is forgery in the same degree as if that person were, in truth, such officer . . . ." N.Y. PEN. LAW § 889: "A person who . . . makes a false entry in any such account or book of accounts [belonging to a corporation], is guilty of forgery in the third degree."

18. N.Y. PEN. LAW § 889-b defines the offense as third-degree forgery, for which the penalty is imprisonment for a maximum of five years. N.Y. PEN. LAW § 893.

19. "No person shall . . . wilfully make a false statement in any prescription . . . ." N.Y. PUB. HEALTH LAW § 3351(1)(b). The penalty for a violation of this section, prescribed by N.Y. PEN. LAW § 1751-a, is a maximum fine of five hundred dollars or imprisonment not exceeding one year, or both.

20. N.Y. REVISED PEN. LAW, effective Jan. 1, 1967, enacted by L. 1965, cc. 1030, 1031.

21. N.Y. REVISED PEN. LAW art. 170 (Forgery and Related Offenses); art. 175 (Offenses Involving False Written Statements).

22. Commission Staff Notes, *Proposed New York Penal Law* 360 (McKinney 1964).

23. See note 5 *supra* and accompanying text.

the proposition that the New York legislature has always intended that the narrow view of forgery be applied.

If, as the foregoing discussion suggests, New York adheres to the narrow view of forgery, it would appear that the defendant's writings in the principal case were not forgeries. The prescriptions were signed by the defendant and issued as his own. As a licensed physician he had authority to order narcotics.[24] The use of the names of deceased and fictitious patients merely constituted the making of false statements of fact, and was insufficient to make forgeries of the writings in which the names were used. However, instead of attempting to reconcile its decision with the law of New York, the court relied on the federal case of *United States v. Tommasello*,[25] which upheld a forgery conviction on facts seemingly almost identical to those of the principal case. Although *Tommasello* was decided under federal law, the New York court apparently felt that the similarity of the applicable forgery laws[26] justified its use as persuasive authority in the principal case. However, the *Tommasello* case has been expressly criticized by the United States Supreme Court[27] and appears to be an anomaly in the federal law of forgery. The Court stated in a subsequent decision[28] that the narrow view of forgery had been accepted by the federal courts[29] and cited the *Tommasello* case as an improper extension of the accepted view.[30] Similarly, if the narrow view of forgery has been accepted in New York, the principal case is an anomaly with respect to the New York law of forgery.

As mentioned above,[31] the making of false written statements in a doctor's prescription for narcotics is a misdemeanor, whereas the forging of a doctor's prescription is a felony. Since New York has the greatest incidence of narcotics offenses in the United States,[32] the prosecutor and court were justifiably concerned with finding the

24. The actual authority of the defendant would preclude the application of the fiction used in some New York forgery cases in which it was reasoned that one who acts outside his authority purports to be another person. See note 12 *supra*.

25. 160 F.2d 348 (2d Cir. 1947).

26. See United States v. First Nat'l City Bank, 235 F. Supp. 894, 897 (S.D.N.Y. 1964), where the federal forgery law and that of New York are said to be the same.

27. Gilbert v. United States, 370 U.S. 650 (1962).

28. *Id.* at 658.

29. See Marteney v. United States, 216 F.2d 760 (10th Cir. 1954); Greathouse v. United States, 170 F.2d 512 (4th Cir. 1948). *Contra*, United States v. First Nat'l City Bank, 235 F. Supp. 894 (S.D.N.Y. 1964).

30. An excerpt from the Court's opinion in Gilbert v. United States, 370 U.S. 650, 658 (1962), is relevant to the situation presented in the principal case: "Nor are we impressed with the argument that 'forge' . . . should be given a broader scope than its common law meaning because it is contained in a statute aimed at protecting the government against fraud."

31. See notes 18 & 19 *supra*.

32. See Cantor, *Criminal Law and the Narcotics Problem*, 51 J. CRIM. L., C. & P.S. 512, 518 (1961).

most effective means of deterring the unlawful distribution of drugs by physicians.[33] Nevertheless, absent contrary legislative intent, statutory language should be given its commonly accepted meaning.[34] In making the forgery of a doctor's prescription a felony, the legislature showed no intention to broaden the definition of forgery.[35] Furthermore, even if the existing definition of forgery or the legislative intent concerning it were unclear, any doubt should be reconciled in favor of the defendant, since penal statutes generally are to be narrowly construed.[36]

The fact that the forgery statute should have been considered inapplicable in the principal case would not mean that a doctor who made false statements in a narcotics prescription would be immune from prosecution. On the contrary, several statutory provisions would appear to have been violated by the defendant. Section 3351 of the Public Health Law[37] expressly prohibits the making of false written statements in a narcotics prescription. Furthermore, section 3330 of the Public Health Law[38] makes it a misdemeanor for a doctor to dispense, administer, or prescribe narcotics other than in good faith in the normal course of his professional practice. Both of these sections of the Public Health Law have been used to prosecute doctors on facts similar to those of the principal case.[39] A violation of

33. Up to the present time, steps taken to stop the unlawful distribution of narcotics have proved ineffective. The theory now advanced to remedy this situation is that the full vigor of punitive legislation should be directed toward non-addicted persons who traffic illegally in narcotics, as they have the free will which can be deterred. See Cantor, *supra* note 32, at 526.

34. *Cf.* Morissette v. United States, 342 U.S. 246, 263 (1952): "The spirit of the doctrine that denies to the federal judiciary power to create crimes forthrightly admonishes that we should not enlarge the reach of enacted crimes by construing them for anything less than the incriminating components contemplated by the words used in the statute. And where Congress borrows terms of art in which are accumulated the legal tradition and meaning of centuries of practice, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken and the meaning its use will convey to the judicial mind unless otherwise instructed. In such cases, absence of contrary direction may be taken as satisfaction with widely accepted definitions, not as a departure from them." See also Gilbert v. United States, 370 U.S. 650 (1962), where the Supreme Court was called upon to determine the scope of the federal forgery law. "Of course Congress could broaden the concept of 'federal forgery' by statutory definition. We hold only that it has not yet done so." *Id.* at 659.

35. The purpose of the addition of § 889-b to the Penal Law was to make the penalty for the forgery of doctors' prescriptions more severe, not to expand the definition of forgery. This was explained by the sponsor of the bill to incorporate § 889-b into the Penal Law: "Its purpose is to amend the Penal Law in relation to forging of doctor's prescriptions . . . . I believe the bill will have a salutary effect in that it will make more severe the sentence in this type of case and may tend to discourage forgery of prescriptions." Brief for Defendant, p. 27, principal case, quoting Letter From Hon. Frank Composto to Governor's Counsel of the State of New York, March 9, 1954.

36. See People v. Shapiro, 4 N.Y.2d 597, 601, 152 N.E.2d 65, 68, 176 N.Y.S.2d 632, 635-36 (1958).

37. N.Y. PUB. HEALTH LAW § 3351(1)(b).

38. N.Y. PUB. HEALTH LAW § 3330.

39. *E.g.*, Stoltz v. Board of Regents, 4 App. Div. 2d 361, 165 N.Y.S.2d 179 (1957)

either of these sections is punishable by a maximum sentence of one year.[40]

If it was desired to prosecute the defendant for the commission of a felony, another avenue was open. Although evidence of the disposition of the narcotics after they came into the defendant's possession would not be relevant to a charge of forgery, the subsequent administration of the drugs to an addict[41] might have amounted to the illegal sale of narcotics. It has been held in one New York decision that the administration of drugs by a physician does not constitute a sale,[42] but it is questionable whether that decision still represents the law of New York, in light of the more recent case of *De Pasquale v. Board of Regents*.[43] In the *De Pasquale* case a physician ordered narcotics from a pharmacist, disguising the order by prescriptions purportedly issued to two of his patients suffering from cancer. The doctor gave the narcotics to another person, allegedly for use by patients in a sanatorium, and for this act was held subject to conviction for the felony of unlawful sale of narcotics, for which a minimum sentence of seven years is prescribed.[44]

It is difficult to see any meaningful distinction between the facts of *De Pasquale* and those of the principal case.[45] However, even if the acts of the defendant in the principal case constituted only administration of narcotics and not sales, it would seem to be a better policy to overrule the early New York case distinguishing between these acts than to redefine the criminal offense of forgery. It should be noted that under the federal narcotics law,[46] which is similar to that of New York,[47] no distinction is made between administering drugs and selling them, and the issuance of even a genuine prescription to an addict to satisfy his habit is considered a sale.[48] Perhaps

(physician who issued prescriptions for narcotics in false names and supplied the drugs to an addict, convicted of a violation of N.Y. PUB. HEALTH LAW § 3351(1)(b)); People v. Greenwood, 139 N.Y.S.2d 654 (Sup. Ct. 1955). See also Matter of Grossman v. Hilleboe, 16 App. Div. 2d 893, 228 N.Y.S.2d 654 (1962) (prosecution of physician under N.Y. PUB. HEALTH LAW § 3330).

40. N.Y. PEN. LAW § 1751-a(1).

41. The defendant gave daily injections of morphine to one of his former patients who had become addicted to this drug. Brief for Defendant, p. 15, principal case.

42. In Tonis v. Board of Regents, 295 N.Y. 286, 67 N.E.2d 245 (1946), it was held that the listing in series of "sell, prescribe, administer and dispense" in N.Y. PUB. HEALTH LAW § 3305 (1954) indicated that for the purposes of the section each of these acts differs from the others.

43. 7 App. Div. 2d 692, 179 N.Y.S.2d 239 (1958).

44. N.Y. PEN. LAW § 1751-(1).

45. In the principal case the defendant directly administered the drugs obtained unlawfully and in the *De Pasquale* case the drugs were given to a second party to administer. Thus, in both cases the drugs were given to one prohibited by law from receiving them.

46. INT. REV. CODE OF 1954, § 4705(a).

47. *Compare* INT. REV. CODE OF 1954, § 4705(a), *with* N.Y. PEN. LAW § 1751(1).

48. See Jin Fuey Moy v. United States, 254 U.S. 189 (1920); Manning v. United States, 31 F.2d 911 (8th Cir. 1929).

the simplest solution to the problem presented in the principal case would be for the legislature to increase the penalty for making false statements in a prescription for narcotics from a misdemeanor with a one-year maximum prison term to a felony with a higher statutory limit on imprisonment.[49]

A serious constitutional question may be raised by the simultaneous existence in the New York statutes of section 889-b of the Penal Law and section 3351(1)(b) of the Public Health Law. The former section punishes the forgery of doctors' prescriptions as a felony; the latter punishes the same offense as a misdemeanor if the prescription is for narcotics. Thus the prosecutor can, in his unreviewable discretion, charge one who has forged a prescription for narcotics either with a felony or with a misdemeanor. Although the United States Supreme Court has never expressly passed on the issue, it has been forcefully suggested by two Justices that such discretion in a prosecutor denies a defendant equal protection and due process of law, unless some justifiable standards are set up to determine what classes of defendants are subject to the more severe penalties.[50] This reasoning has been applied by certain state courts to strike down statutes allowing the same acts to be punished as either felonies or misdemeanors.[51] It would appear that the defendant in the principal case might successfully challenge the constitutionality of invoking the felony provisions against him, when other physicians had been prosecuted only for misdemeanors in similar situations.[52]

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49. This policy was used by the legislature when N.Y. PEN. LAW § 889-b increased the penalty for the "true" forgery of a doctor's prescription from a misdemeanor to a felony. See Letter From Hon. Frank Composto, *supra* note 35.

50. Berra v. United States, 351 U.S. 131, 138-39 (1956) (dissenting opinion of Black, J., joined by Douglas, J.). In the *Berra* case the acts of the defendant, essentially constituting income tax evasion, could have been prosecuted under Int. Rev. Code of 1939, § 145(b), for which the penalties were a $10,000 fine or imprisonment for five years, or under Int. Rev. Code of 1939, § 3616-a, as a misdemeanor having maximum penalties of a $1,000 fine or imprisonment for one year or both. Mr. Justice Black stated:

> I think we should construe these sections so as not to place control over the liberty of citizens in the unreviewable discretion of one individual—a result which seems wholly incompatible with our system of justice. Since Congress has specifically made the conduct charged a misdemeanor, I would not permit the prosecution for a felony under the broad language of Section 145(b). Criminal statutes . . . should be construed narrowly, not broadly. . . . This basic principle is flouted if either of these statutes can be elected as the controlling law at the whim of a prosecuting attorney. . . . A Congressional delegation of such vast powers would raise serious Constitutional questions." Berra v. United States, *supra* at 138-40.

Where suitable standards are set up for distinguishing between classes of defendants, there is no denial of due process or equal protection of the law. See Hutcherson v. United States, 345 F.2d 964 (D.C. Cir. 1965).

51. State v. Pirkey, 203 Ore. 697, 281 P.2d 698 (1955); Olsen v. Delmore, 48 Wash. 2d 545, 295 P.2d 324 (1956). *But cf.* People v. Twitchell, 8 Utah 2d 314, 333 P.2d 1075 (1959).

52. See note 39 *supra*. The fact that the defendant in the principal case received a suspended sentence does not remove the severe consequences of a felony conviction.

The court in the principal case, in response to an unlawful distribution of narcotics, expanded New York's law of forgery to encompass this offense, ignoring the boundaries that have traditionally defined that crime in New York. It is clear that under the Revised Penal Law, effective January 1, 1967, this course will not be open to the courts. Statutory re-interpretation or amendment will be necessary if, in the interest of deterrence, it is felt that a physician who unlawfully administers narcotics must be prosecuted for a felony.

Under N.Y. EDUC. LAW § 6514(1), the license of a physician convicted of a felony may be revoked without a hearing.